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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/512,581	02/24/2000	Ana M. Soto	MBI-008	5767
48425	7590	03/08/2005	EXAMINER	
LAWSON & WELTZEN, LLP 88 BLACK FALCON AVE SUITE 345 BOSTON, MA 02210			RAWLINGS, STEPHEN L	
			ART UNIT	PAPER NUMBER
			1642	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

20050303

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

**Notice of Non-Responsive Amendment**

The amendment filed December 21, 2004 is acknowledged but considered non-responsive to the Office action mailed October 28, 2004 for the following reasons:

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

The Office action mailed October 28, 2004 stated this application is in condition for allowance *except* for the following formal matters:

(a) The drawing labeled as Fig. 6-2 incorrectly indicates the length of the depicted polynucleotide sequence to be 5337 nucleotides, since the polynucleotide sequence is the polynucleotide sequence set forth SEQ ID NO: 4, which is 5355 nucleotides. (b) The specification contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R. § 1.821(a)(1) and (a)(2). Sequences appearing in the specification and/or drawings must be identified by sequence identifier in accordance with 37 C.F.R. 1.821(d). According to 37 CFR § 1.821(a), an unbranched sequence of four or more specifically identified amino acids or an unbranched sequence of ten or more nucleotides must be identified by sequence identification numbers. See MPEP § 2422.01.

In this instance, the sequences depicted in Figures 2, 3, and 5 are not identified by sequence identification numbers, either in the figure or in the brief description of figures at pages 9 and 10.

Accordingly, the Office action required:

(a) A replacement of the drawing labeled as Fig. 6-2 with appropriate correction; and  
(b) Appropriate amendments to the specification or drawings inserting the required sequence identifiers, either in the figure or in the brief description of figures at pages 9 and 10.

However, in reply, rather than providing a replacement drawing, Applicant has attempted to amend the corresponding brief description of the depicted figure to recite, “[t]he number 5337 found in parentheses at the 3' terminus of the nucleotide sequence in Figure 6-2 indicates the position of the nucleotide residue T located to the left of the 18 residue polyA sequence”. The proposed amendment would introduce new matter since the record clearly indicates that the

number 5337 found in parentheses does not refer to the position of the nucleotide residue T located to the left of the 18 residue polyA sequence. Rather, the record indicates that the number 5337 is an apparent typographical error, since the sequence depicted in the figure is not 5337 residues in length but 5355. The amendment would introduce concepts that are not supported by the originally filed specification (e.g., it would introduce the concept of a nucleotide sequence consisting of only the first 5337 residues of SEQ ID NO: 4, where there is no written support otherwise).

In addition, Applicant's amendment appears replete with errors. For example, Applicant has attempted to amend the description of Figure 2 to recite, "positions 5 to 117 of SEQ ID No. 1 (top line)", where the top line of the drawing actually depicts residues 5-161 of "the AS3 sequence". Furthermore, regarding the proposed amendment to the brief description of Figure 3:

- (a) The four amino acid sequences of "Subdomain Mg-ATP binding loop" would *remain unidentified*;
- (b) The description would identify *three* amino acid sequences of "Subdomain I  $\beta$ -strand 2" as SEQ ID NOs: 12-15 (i.e., 4 sequences); and
- (c) The description would identify *four* amino acid sequences of "Subdomain IV  $\beta$ -strand 4" as SEQ ID NOs: 27-29 (only 3 sequences).

Notably, this is not necessarily an exhaustive list of the errors contained in the proposed amendment nor a complete list of issues that its entry may raise; therefore, Applicant should determine that the reply to this Office communication is correct and complete to satisfy the requirements set forth in the previous Office action mailed October 28, 2004.

Applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (571) 272-0836. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on (571) 272-0787. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stephen L. Rawlings, Ph.D.  
Examiner  
Art Unit 1642

slr  
March 3, 2005



LARRY R. HELMS, PH.D  
PRIMARY EXAMINER